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INTERSTATE COMMERCE COMMISSION

INTERIM USER AGREEMENT

Dated as of October 1, 1989

Between

GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION),  
THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY

AND

CSX TRANSPORTATION, INC.

---

Covering

Ten (10) SD-60 3,800 Horsepower Locomotives

THIS AGREEMENT, dated as of October 1, 1989, between GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), a Delaware corporation (Bailor), THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY (B&OCT), and CSX TRANSPORTATION, INC., a Virginia corporation (CSXT):

WITNESSETH:

Pursuant to a letter agreement dated March 10, 1989 between CSXT and Bailor, CSXT and Bailor entered into one or more purchase agreements (the Purchase Agreement) incorporated herein and which is made a part hereof, pursuant to which the Bailor has agreed (among other things) to construct and to deliver to CSXT at Detroit, Michigan and CSXT agreed to accept and pay for, ten (10) SD-60 3,800 H.P. diesel electric locomotives, bearing road numbers CSXT 8700 to CSXT 8709, inclusive, (the Locomotives). Pursuant to an Assignment of Purchase Agreement dated as of August 31, 1989, CSXT has assigned to B&OCT its rights and obligations under said Purchase Agreement.

CSXT intends to finance the purchase of the Locomotives from the Bailor pursuant to one or more permanent forms of financing but deliveries of the Locomotives are scheduled to begin on or about October 15, 1989, and CSXT will not have completed said financing arrangement(s) by that time. CSXT represents that such financing arrangement(s) will be established, however, on or before December 31, 1989. CSXT, in order that it may use the

Locomotives pending establishment of such financing arrangement(s), desires to have temporary custody and possession of the Locomotives upon their completion, solely as a bailee of the Locomotives, and the Bailor is willing to grant temporary custody and possession to CSXT upon the terms and conditions hereinafter set forth.

In consideration of the premises, Bailor hereby delivers to B&OCT and CSXT and B&OCT and CSXT accepts from the Bailor the Locomotives as of the date each of them is delivered at Detroit, Michigan for the period ending on the earlier of December 31, 1989 or the date of establishment of said financing arrangement(s). On such termination date, this Agreement shall automatically be cancelled or superseded without further action by or notice to any party concerned.

Upon delivery of each Locomotive, B&OCT's and CSXT's representative shall execute a certificate of acceptance acknowledging the receipt of delivery of each such Locomotive under this Agreement. Title to the Locomotives shall remain in the Bailor and B&OCT's and CSXT's rights and interests therein are and shall be solely that of possession, custody and use as bailee under this Agreement. Transfer of title shall be effected only at the time of delivery of bills of sale under the permanent financing arrangements for the Locomotives. CSXT shall do such acts as may be required by law, or reasonably requested by the Bailor, for the protection of the Bailor's title to and interest in the Locomotives, including, but not limited to filing with the Interstate Commerce Commission.

B&OCT shall pay or cause to be paid to the Bailor the purchase price of the Locomotives stated in the Purchase Agreement (the "Purchase Price") within two (2) days of its receipt of the tenth Locomotive hereunder. In the event B&OCT fails to pay the Purchase Price, as provided in the preceding sentence, it shall pay interim per diem rent equal to the Purchase Price multiplied by the Prime Rate of Interest published in the Wall Street Journal divided by 365. Such interim rent shall be paid for each day during the period beginning on the date payment is due hereunder until the date payment is made inclusive. In no event, however, may B&OCT retain use of the Locomotives beyond December 31, 1989.

B&OCT and CSXT agree that they (a) shall permit no liens of any kind to attach to the Locomotives and (b) will indemnify and save harmless the Bailor from any and all claims, expenses or liabilities of whatsoever kind, including any and all taxes, fines, charges and penalties that may accrue or be assessed or imposed upon the Locomotives or the Bailor as a result of the Bailor's ownership or because of the use, operation, management or handling of the Locomotives by CSXT during the term of this Agreement. CSXT's and B&OCT's obligations contained in this paragraph shall survive the termination of this Agreement.

B&OCT and CSXT will, at their own expense, keep and maintain the Locomotives in good order and running condition and shall, at its option, replace or repair any component or part of any Locomotive damaged or destroyed by any cause during the term of this Agreement or promptly pay to the Bailor the Purchase Price

of any Locomotive (as set forth in the Purchase Agreement) which may in the opinion of Bailee be damaged beyond economic repair or destroyed by any cause during the term of this Agreement.

Prior to the delivery of each such Locomotive under this Agreement, each such Locomotive shall be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously marked upon each side of each Locomotive, in contemplation of the financing arrangement, as hereinbefore mentioned, the following legend in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT  
FILED WITH THE INTERSTATE COMMERCE COMMISSION

CSXT hereby agrees to indemnify the Bailor against any liability, loss or expense incurred by it as a result of placing of the aforementioned markings on the Locomotives. In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any Locomotive, CSXT shall immediately cause the same to be restored or replaced.

In the event B&OCT fails to pay the Purchase Price plus any interim rent due hereunder prior to December 31, 1989 then Bailor may, by its agents, enter upon the premises of CSXT or other premises where the Locomotives may be and take possession of all or any such Locomotives and thenceforth hold, possess and enjoy the same free from any right of B&OCT or CSXT, or their successors or assigns, to use the Locomotives for any purposes whatsoever; and to sell and deliver the Locomotives to others upon such terms as Bailor may see fit in its sole discretion, it being understood and agreed that B&OCT and CSXT shall be liable

to Bailor for (i) any amount equal to any difference in the price paid by such other parties and the sum of the Purchase Price plus interim rent due hereunder, plus (ii) an amount equal to all expenses incident to such sale, including but not limited to the expenses of withdrawing the Locomotives from the service of CSXT, providing for the care and custody of such Locomotives, preparing such Locomotives for sale, and selling such Locomotives. CSXT shall pay from time to time upon demand by Bailor the foregoing amounts.

B&OCT, CSXT and Bailor represent and warrant that:

- ° Each is a duly organized and validly existing corporation in good standing under the laws of its state of incorporation; is duly qualified to do business in such jurisdictions as are necessary to carry out the transactions contemplated by this Agreement; and has power and authority to own its properties and carry on its business as now conducted;
- ° The execution and delivery of this agreement is within its corporate authority, has been authorized by proper corporate proceedings and will not contravene any provision of law or of its charter or by-laws nor contravene or constitute a default under the provisions of any agreement or other instrument binding upon it, and the Agreement is a valid and binding obligation of each enforceable, subject to applicable insolvency, bankruptcy or moratorium laws, against each in accordance with its terms;
- ° No governmental authorizations, approvals or exemptions are required for the execution and delivery of this Agreement or for the validity and enforceability thereof or the bailment of the

Locomotives hereunder on the other terms and conditions provided for herein; or, if any such authorizations are required, they have been obtained, and if any such shall hereafter be required, they will promptly be obtained.

B&OCT and CSXT represent and warrant that:

The rights of Bailor as herein set forth and the title of Bailor to the Locomotives are senior to the lien of any mortgage, security agreement or other instrument binding upon B&OCT and CSXT;

Any or all of the rights, benefits or advantages of the Bailor, including the right to receive the purchase price of the Locomotives, may be assigned by the Bailor and reassigned by any assignee at any time or from time to time, provided, however, that no such assignment shall subject any such assignee to any of the Bailor's warranty, indemnity or obligations contained in this Agreement or the Purchase Agreement. In the event the Bailor shall assign its rights to receive the payments for the Locomotives, and B&OCT and CSXT shall receive written notice thereof from the Bailor, together with a counterpart of such assignment stating the identity and the post office address of the assignee, all payments thereafter to be made by B&OCT or CSXT for the Locomotives or in connection therewith shall, to the extent so assigned, be made to the assignee against proper receipt therefor in form satisfactory to B&OCT and CSXT.

In the event of any such assignment by the Bailor of its rights to receive any such payments, the rights of such assignee to such payments as may be assigned shall not be subject to any

defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to B&OCT or CSXT by the Bailor. Any and all such obligations, howsoever arising, shall be and remain enforceable by B&OCT and CSXT, or their successors and assigns, only against the Bailor and its successors and assigns (other than assignees of such rights, benefits or advantages assigned pursuant to this Agreement).

THIS AGREEMENT shall be governed by and construed in accordance with the laws of the State of Maryland.

Attest:

[CORPORATE SEAL]

By: R. J. Fichman  
Assistant Secretary

CSX TRANSPORTATION, INC.

By: A. B. Altman  
Treasurer

Attest:

[CORPORATE SEAL]

By: R. J. Fichman  
Assistant Secretary

THE BALTIMORE AND OHIO CHICAGO  
TERMINAL RAILROAD COMPANY

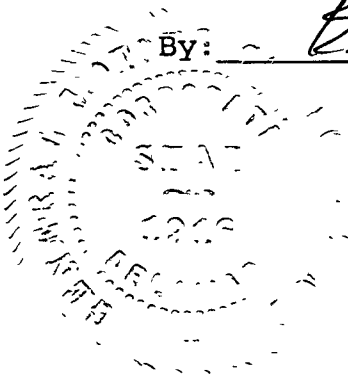
By: A. B. Altman  
Treasurer

Attest:

By: [Signature]

GENERAL MOTORS CORPORATION  
(ELECTRO-MOTIVE DIVISION)

By: [Signature]





State of Maryland)  
                                ) ss:  
City of Baltimore)

On this 25th day of October, 1989, before me personally appeared A. B. Aftoora, to me personally known, who, being by me duly sworn, says that he is Treasurer of CSX TRANSPORTATION, INC., that said instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Glenda J. Green  
Notary Public

My Commission expires: July 1, 1990

State of Maryland) ) ss:  
City of Baltimore)

On this 25th day of October, 1989, before me personally appeared A. b. Aftoora, to me personally known, who being by me duly sworn, says that he is Treasurer of THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY, that said instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Glenda J. Green  
Notary Public

State of Illinois )  
City of La Grange ) ss:

On this 25th day of October, 1989, before me personally appeared P. Michael Smith to me personally known, who, being by me duly sworn, says that he is Asst. Comptroller of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), that said instrument was executed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

Juanita Acantilado  
Notary Public

My Commission expires: April 17, 1992





**CSX DISTRIBUTION SERVICES & CSX EQUIPMENT**

Robert F. Hochwarth  
Senior Counsel

100 North Charles Street  
Baltimore, MD 21201  
(301) 237-4605

9-303A071

October 25, 1989

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INTERSTATE COMMERCE COMMISSION

Secretary  
Interstate Commerce Commission  
Attn: Recordation Unit  
12th Street & Constitution Avenue, N.W.  
Washington, DC 20423

Mrs. Mildred Lee:

On behalf of CSX Transportation, Inc., enclosed for filing and recording under 49 U.S.C. §11303(a) and the regulations promulgated thereunder, are five executed counterparts of an agreement dated October 1, 1989, not previously recorded, among General Motors Corporation (Electro-Motive Division), The Baltimore and Ohio Chicago Terminal Railroad Company and CSX Transportation, Inc. This Agreement constitutes an Interim User Agreement dated as of August 31, 1989, which allows use of the following described locomotives pending establishment of permanent financing. Equipment covered by the above agreement consists of ten (10) SD-60 3,800 H.P. diesel electric locomotives bearing road numbers in series CSXT 8700 to CSXT 8709, inclusive.

The names and addresses of the parties are as follows:

Bailor: General Motors Corporation  
(Electro-Motive Division)  
9301 W. 55th Street  
La Grange, IL 60525

Bailee:

The Baltimore and Ohio Chicago Terminal  
Railroad company  
100 North Charles Street  
Baltimore, MD 21201

Bailee:

CSX Transportation, Inc.  
100 North Charles Street  
Baltimore, MD 21201

Mrs. Mildred Lee  
October 25, 1989  
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The equipment will be marked "CSX Transportation, Inc.," or CSXT, or in some other appropriate manner and will also be marked "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

Enclosed is a check in the amount of \$13.00 in payment of the filing fee.

Once the filing has been made, please return to the undersigned stamped copies of the Agreement not needed for your files, together with the fee receipt, a copy of the letter from the ICC acknowledging the filing, and an extra copy of this letter of transmittal.

Very truly yours,

*D. J. Hubert*

RFH:jg

Enclosures

**Interstate Commerce Commission**  
Washington, D.C. 20423

11/1/89

OFFICE OF THE SECRETARY

Robert F. Hochwarth  
Senior Counsel  
CSX Transportation Inc  
100 North Charles Street  
Baltimore MD. 21201

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/30/89 at 4:40pm, and assigned recordation number(s). 16587

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)